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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,631	09/26/2001	Klaus-Helmut Muller	Mo-6595/LeA33,628	2092

157 7590 11/18/2002

BAYER CORPORATION  
PATENT DEPARTMENT  
100 BAYER ROAD  
PITTSBURGH, PA 15205

EXAMINER
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SMALL, ANDREA D SOUZA

ART UNIT	PAPER NUMBER
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1626

DATE MAILED: 11/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/937,631

Applicant(s)

MULLER ET AL.

Examiner

Andrea D Small

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-10 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other:

## **DETAILED ACTION**

### ***Election/Restrictions***

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Due to the numerous variables in the claims, e.g. R1, R2, R3, R4, n, A, Z and Y and their widely divergent meanings, a precise listing of inventive groups cannot be made. The following groups are exemplary:

Group I claim(s) 1-10 in part drawn to products of the formula (I) wherein n is 0-3, A is alkylene, R1-R4 are as claimed, Y is as claimed and Z represents the first heterocyclic moiety in claim 2, page 5, line 13, one process for their preparation (e.g. process (a) from claim 7), and one method of use (e.g. controlling undesirable plants).

Group II claim(s) 1-10 in part drawn to products of the formula (I) wherein n is 0-3, A is alkylene, R1-R4 are as claimed, Y is as claimed and Z represents the second heterocyclic moiety in claim 2, page 5, line 13, one process for their preparation (e.g. process (a) from claim 7), and one method of use (e.g. controlling undesirable plants).

Group III claim(s) 1-10 in part drawn to products of the formula (I) wherein n is 0-3, A is alkylene, R1-R4 are as claimed, Y is as claimed and Z represents the third heterocyclic moiety in claim 2, page 5, line 13, one process for their preparation (e.g. process (a) from claim 7), and one method of use (e.g. controlling undesirable plants).

Group IV claim(s) 1-10 in part drawn to products of the formula (I) wherein n is 0-3, A is alkylene, R1-R4 are as claimed, Y is as claimed and Z represents the fourth heterocyclic moiety

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in claim 2, page 5, line 13, one process for their preparation (e.g. process (a) from claim 7), and one method of use (e.g. controlling undesirable plants), etc.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted. Again, this list is not exhaustive as it would be impossible under the time constraints due to the sheer volume of subject matter instantly claimed. Therefore, applicant may choose to elect a single invention by identifying another specific embodiment not listed in the exemplary groups of the invention and examiner will endeavor to group the same. **If applicant is unable to elect a single invention, applicant may instead choose to elect a specific compound and examiner will attempt to group it.**

The claims herein lack unity of invention under PCT Rule 13.1 and 13.2 since the compounds defined in the claims lack a significant structural element qualifying as the special technical feature that defines a contribution over the prior art. The compounds claimed contain a 4-carboxyphenyl-1,2 diazole group, which does not define a contribution over the prior art. The substituents on the 4-carboxyphenyl-1,2 diazole vary extensively and when taken as a whole result in vastly different compounds. Accordingly, unity of invention is considered to be lacking and restriction of the invention in accordance with the rules of unity of invention is considered to be proper. Additionally, the vastness of the claimed subject matter, the numerous provisos found in the claims, and the complications in understanding the claimed subject matter imposes a burden on any examination of the claimed subject matter.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea D. Small, whose telephone number is (703) 305-0811. The examiner can normally be reached on Monday-Thursday from 8:30 AM - 7:00 PM.

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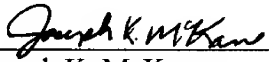
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (703) 308-4537. The Unofficial fax phone number for this Group is (703) 308-7921. The Official fax phone numbers for this Group are (703) 308-4556 or 305-3592.

When filing a FAX in Technology Center 1600, please indicate in the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [Joseph.McKane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-1234

Andrea D. Small  
November 14, 2002

  
\_\_\_\_\_  
Joseph K. McKane  
Supervisory Patent Examiner  
Art Unit 1626  
Technology Center 1